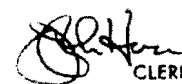


FILED

DEC 06 2012


CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

AZIZIA PETERSON

Movant,

-VS-

UNITED STATES OF AMERICA,

Respondent.

*
*
*
*
*
*
*
*
*
*

CIV. 12-4189

ORDER

Petitioner, Azizia Peterson, filed a pro se motion to vacate, set aside, or correct her sentence pursuant to 28 U.S.C. § 2255. Peterson is incarcerated at the Federal Correctional Institution in Waseca, Minnesota. From a reading of the Petition, the court cannot determine that “it plainly appears from the face of the petition . . . that the petitioner is not entitled to relief in the district court” warranting summary dismissal pursuant to Rule 4 of the Rules Governing Section 2255 Cases in the United States District Court.

In her Petition, Peterson notes that on May 19, 2010, “United States Attorney General Eric Holder, Jr. issued a Memorandum concluding that the FSA’s new mandatory minimum sentencing provisions apply to all sentencings that occur on or after August 3, 2010, regardless of when the offense conduct took place.” *See* Doc. 1 at p. 2. Peterson also asserts her “10 year sentence is subject to collateral attack based on the Fair Sentencing Act of 2010. A new sentencing hearing is required because applying the FSA mandatory minimums to her current sentence, results in her facing a lower sentence, that is not a mandatory minimum.” *See* Doc. 1 at p. 3.

On August 3, 2010, the Fair Sentencing Act (“FSA”) was enacted, raising the amount of cocaine base required for imposition of a mandatory minimum sentence. *See* Pub. L. No. 111-220, 124 Stat. 2372 (2010). The United States Supreme Court has held that the more lenient penalties of the FSA apply to those offenders whose crimes occurred before the effective date of the FSA, but

who were sentenced after that date. *Dorsey v. United States*. 132 S.Ct. 2321 (2012). The FSA took effect on August 2, 2010. Peterson's crime occurred before August 3, 2010, and she was sentenced after August 3, 2010, on December 6, 2010. It appears that the FSA applies to Peterson, possibly reducing her statutory mandatory minimum sentence from 10 years to 5 years. The Court's preliminary review indicates, however, that Peterson's sentencing guideline range would not change from the 120-150 month range determined at her sentencing hearing. The Government is directed to respond to these issues.

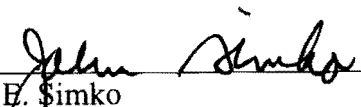
Therefore, it is

ORDERED that the Clerk of Court will deliver or serve a copy of the motion on the United States Attorney for the District of South Dakota.

IT IS FURTHER ORDERED that the United States Attorney for the District of South Dakota will serve and file an answer or responsive pleading to the petition, together with a legal brief or memorandum in support thereof, on or before Monday, January 7, 2013.

Dated this 6 day of ~~November~~^{Dec}, 2012.

BY THE COURT:



John E. Simko
United States Magistrate Judge